

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 971 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ORIENTAL INSURANCE CO.LTD.

Versus

SAVITABEN WD/O MANJIBHAI GAFURBHAI

Appearance:

MR RAJNI H MEHTA for Petitioner

MR PRADYUMAN B BHATT for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE A.R.DAVE

Date of decision: 19/07/96

ORAL JUDGEMENT

Admit. With the consent of the parties, the matter is taken up for final hearing.

The appeal is filed by the Insurance Co. on the ground that the terms and conditions of the policy are

violated. Submission relates to fare paying passengers unauthorisedly taken on goods vehicle. However, on going through the judgment, we find that the Insurance Co. in State of Gujarat as required by two Full Bench decisions of this court has not proved its defence.

For doing so, it is expected of the company to get produced on record permit issued under the provisions of the Motor Vehicles Act, 1939. This having not been done, obviously according to Rule 118 pertaining to goods vehicle and regulating travel of passengers therein, there being no evidence and statutorily therefore, when persons can travel as owner of the goods, the aforesaid defence in our opinion has rightly been rejected by the Trial Court.

Second point raised is with regard to the limits of the liability of the Insurance Co. The policy being an active policy in respect of goods vehicle, the liability of the Insurance Co. will be Rs.1,50,000/-. The amount awarded by the Motor Accident Claims Tribunal (Auxiliary), Ahmedabad (Rural), Mirzapur by order dated 15-11-1995 in Petition No. 377 of 1989 is for Rs.1,75,000/-. The company has been held jointly and severally liable for the entire amount.

Obviously, its liability and the contract of the Insurance being limited to Rs.1,50,000/-, the appeal will have to be partly allowed to the aforesaid extent.

Accordingly the appeal is partly allowed. The award is modified in relation to appellant-Insurance Co. and its liability is restricted to Rs.1,50,000/-. Rest of the order of the Tribunal shall remain as it is. The company shall deposit the amount commensurating with its liability with proportionate interest and cost as per the order of the Trial Court within a period of 6 weeks. Sum of Rs.25,000/- deposited are ordered to be refunded to the appellant.

Appeal stands accordingly allowed. No order as to cost.
